

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

16 On April 2, 2010, the parties submitted a stipulation and proposed order regarding the
17 handling of inadvertently produced privileged documents. Based on the parties' stipulation,
18 IT IS HEREBY ORDERED that the Stipulated Protective Order entered in this action on
19 January 14, 2010 (docket no. 54), is amended to add the following Paragraph 13:

20 13. Each party shall make efforts that are reasonably designed to protect its
21 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001).
22 What constitutes efforts that are “reasonably designed” to protect privileged materials
23 depends on the circumstances; the law does not require ‘strenuous or Herculean
24 efforts,’ just ‘reasonable efforts.’ *See, e.g., Hynix Semiconductor, Inc. v. Rambus,*
25 *Inc.* 2008 WL 350641, *1-*2 (ND Cal., Feb. 2, 2008); *see also*, FED.R.CIV.PRO.
26(f)(3) advisory committee’s notes to 2006 amendments (discussing the substantial
27 costs and delays that can result from attempts to avoid waiving privilege, particularly
28 when discovery of electronic information is involved). When a particular Rule 34
29 request requires a production or inspection that is too voluminous, expedited or
30 complex (such as certain electronic productions) to allow for an adequate pre-
31 production review, the parties may enter into non-waiver agreements for that
32 particular production. If the requesting party is unwilling to enter into such an
33 agreement, the Producing Party may move the court for a non-waiver order.

In the event that, despite reasonable efforts, a Producing Party discovers it has inadvertently produced privileged materials, then as soon as reasonably possible the Producing party shall notify the Receiving Party that the document(s) or materials

1 should have been withheld on grounds of privilege. After the Receiving Party
2 receives this notice from the Producing Party under this paragraph, the Receiving
3 Party shall not disclose or release the inadvertently produced material to any person or
4 entity pending resolution of the Producing Party's claim of privilege. The parties
5 shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
6 reasonably possible after a notice of inadvertent production. If the Producing Party
7 and Receiving Party agree that the inadvertently produced material is privileged, and
8 was disclosed despite efforts by the Producing Party that were 'reasonably designed'
9 to protect the materials, then the Receiving Party shall: 1) refrain from any further
10 examination or disclosure of such document(s); 2) return or certify the destruction of
11 all copies (including summaries and excerpts) of such material; and (c) not use such
12 material for any purpose. If no agreement is reached, then within 10 court days after
13 the meet and confer, the Producing Party must seek a ruling from this court to
14 establish that the material is privileged and that the Producing Party did not waive the
15 privilege by inadvertently producing the material. If the Producing Party seeks such a
16 ruling, the Receiving Party shall not disclose or release the inadvertently produced
17 material to any person or entity pending the court's ruling on the Producing Party's
18 motion.

19 IT IS FURTHER ORDERED that all other provisions of the Stipulated Protective Order
20 remain in force.

21 Dated: *April 5, 2010*

22 
23 PATRICIA V. TRUMBULL
24 United States Magistrate Judge

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